

## TEMPLATE PROJECT AGREEMENT

*Note: this document should not be used where a third party is involved in the Project (a Third Party Project Agreement should be used) or for a Specified Project.*

This Project Agreement is dated \_\_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_

**PROJECT:** [Number and Name]

### BETWEEN

Name	CRC for High Performance Soils Limited
ABN	63 618 897 224
Short form name	<b>CRC HPS</b>
Address	CRC HPS University of Newcastle University Drive, CALLAGHAN NSW 2308 Email address: <a href="mailto:michael.crawford@soilcrc.com.au">michael.crawford@soilcrc.com.au</a> Attention: Michael Crawford, CEO

### AND

#### The Project Participants

Name	[Project Participant]
ABN	
Short form name	
Address	

Name	[Project Participant]
ABN	
Short form name	
Address	

## Background

- A. The Participants have established a research collaboration known as the Cooperative Research Centre for High Performance Soils (**CRC**), pursuant to the Major Partners Agreement.
- B. The Parties have agreed to carry out and contribute to the Project as part of the Activities of the CRC.
- C. The CRC Board has approved the Project and has authorised CRC HPS to enter into this Agreement.
- D. The Parties have agreed to carry out the Project on the terms and conditions of this Agreement.

## IT IS AGREED:

### 1. Definitions and Interpretation

(a) Terms which are used in this Agreement and which are defined in the Major Partners Agreement have the same meaning when used in this Agreement, unless otherwise defined in clause 1.

(b) In this Agreement, unless the contrary intention appears:

**Agreement** means this Agreement, including the Background, the Schedules and the Annexures, as amended by the Parties from time to time.

**Annexure** means an annexure to this Agreement.

**Background IP** means:

- (i) the Intellectual Property detailed in Item 4 of Schedule 1 that a Party has agreed to contribute as Background IP to the Project; and
- (ii) any other Intellectual Property that a Party offers to contribute as Background IP for the Project and which has been agreed in writing by CRC HPS as being accepted as Background IP for the Project,

and, for the avoidance of doubt, does not include any CRC IP.

**Commencement Date** means the date specified in Item 2 of Schedule 1.

**Completion Date** means the date specified in Item 3 of Schedule 1.

**MPA Clauses** means the clauses of the Major Partners Agreement detailed in Schedule 2, and **MPA Clause** [number] will refer to a specific provision of the MPA Clauses.

**Major Partners** means those parties designated as such in the Major Partners Agreement.

**Major Partners Agreement** means the agreement establishing the CRC, entered into on or about 2 November 2017 and any amendments thereto.

**Parties** means the parties to this Agreement and **Party** means any one of them.

**Partners** means those parties designated as such in the Partners Agreement.

**Partners Agreement** means the agreement between a Party that is a Partner and CRC HPS, pursuant to which that Party became involved in the CRC.

**Project** means the project detailed in Item 1 of Schedule 1 and the Project Plan.

**Project Budget** means the budget for the Project set out at Annexure 2.

**Project Contribution** means the Contribution to the Project to be contributed by a Party as detailed in the Project Budget and the Project Plan.

**Project Funds** means the money to be paid to the Project Participants for conducting the Project, as detailed in the Project Budget, and may include Grant Funds received by CRC HPS.

**Project IP** means Intellectual Property developed in the course of carrying out the Project.

**Project Leader** means the leader of the Project as detailed in the Project Plan.

**Project Participants** means the Parties other than CRC HPS.

**Project Plan** means the plan set out at Annexure 1.

**Representative** means the representative of a Party as listed in Item 6 of Schedule 1, or as notified in accordance with clause 6(d).

**Schedule** means a schedule to this Agreement.

**Special Terms** means the terms set out at Item 12 of Schedule 1.

**Specified Division** means, in relation to a Project Participant, the division/s, department/s or faculty/s of that Project Participant specified in Item 7 of Schedule 1 (if any).

**Term** means the period of this Agreement as specified in clause 3.

**Use Field** means the purpose for which each Project Participant may use the Project IP as specified in Item 8 of Schedule 1 but does not include Utilisation.

**Use Field Conditions** means any conditions relevant to a Use Field specified in Item 8 of Schedule 1.

**Utilisation** means the technology transfer and take-up and use of Project IP by end- users and includes commercialisation. **Utilise** has a corresponding meaning.

**Utilisation Agent** means the party appointed to undertake Utilisation of Project IP under clause 10(a).

**Utilisation Field** means the field in which the Utilisation Agent is permitted to Utilise Project IP as specified in Item 11 of Schedule 1 or terms of assignment.

**Utilisation Plan** means, with respect to particular Project IP, a plan specifying the general approach to be adopted with respect to Utilisation of that Project IP, subject to any obligations of confidentiality owed to third parties.

## 2. Project Terms

- (a) Each Major Partner is bound by the terms of the Major Partners Agreement in the conduct of this Project.
- (b) Each Partner is bound by the terms of its Partners Agreement in the conduct of this Project.
- (c) Without limitation to clause 2(a), the MPA Clauses listed in Schedule 2 are incorporated into this Agreement *mutatis mutandis* (and a copy of the MPA Clauses will be provided by CRC HPS to each Party that is not a Major Partner prior to execution of this Agreement and otherwise on request). Each Party will comply with the MPA Clauses in the conduct of the Project.

- (d) In the event of any inconsistency, the following order of precedence will apply to the extent of the inconsistency, unless the contrary intent is expressly stated:
  - (i) the Special Terms;
  - (ii) the MPA Clauses listed at Schedule 1; then
  - (iii) the other terms of this Agreement.
- (e) The rules of interpretation set out in clause 1.2 of the Major Partners Agreement and clause 1.2 of the Partners Agreement (being the same provisions) will apply in the interpretation of this Agreement.

### 3. Commencement and Term

This Agreement commences on the Commencement Date and unless terminated or extended pursuant to clause 15, expires on the Completion Date.

### 4. Project

- (a) The Project Participants will carry out the Project in accordance with this Agreement.
- (b) Without limitation to clause 4(a), the Parties agree to:
  - (i) fully cooperate with each other to ensure timely progress and completion of the Project;
  - (ii) act reasonably and in good faith with respect to matters that relate to the Project and this Agreement; and
  - (iii) perform their obligations and responsibilities by the dates specified in this Agreement.

### 5. Project Contributions and Project Funds

- (a) Each Project Participant will provide its cash Project Contributions to CRC HPS in accordance with MPA Clause 7 and 16.
- (b) Each Project Participant agrees to make available for the Project its respective non-cash Project Contributions in accordance with the Project Plan.
- (c) Subject to clauses 5(d) and 5(e), CRC HPS will pay the Project Funds to the Project Participants in accordance with the Project Budget.
- (d) CRC HPS:
  - (i) may withhold Project Funds if any Milestones have not been achieved or Deliverables have not been provided by their required dates; and
  - (ii) must release the withheld Project Funds once the Project Participants have achieved the missed Milestones or provided the required Deliverables as the case requires.
- (e) If a Project Participant has not paid a cash Contribution that is due to CRC HPS in accordance with this Agreement, CRC HPS is relieved from its

obligation to pay to the Project Participant that part of the Project Funds corresponding to those unpaid cash Contributions while they remain unpaid. The obligations of the Project Participant to carry out the Project will be reduced to the extent of any Project Funds withheld pursuant to this clause 5(e).

- (f) The Project Participants may use the Project Funds and other Project Contributions:
  - (i) for the purposes of the Project only; and
  - (ii) in accordance with the Project Plan.
- (g) Notwithstanding any other provision of this Agreement, the Parties acknowledge that the obligations of each Project Participant under this Agreement to carry out the Project are limited to using the resources of the Specified Division of that Project Participant.

## 6. Project Leader and Representatives

- (a) The Project Leader will manage the day to day conduct of the Project in accordance with the MPA Clauses.
- (b) Each Party will appoint a Representative to act on its behalf with respect to the conduct of the Project and matters arising under this Agreement. At the Commencement Date, each Party's Representative is detailed at Item 6 of Schedule 1.
- (c) Each Party warrants that its Representative:
  - (i) will represent the Party that appointed him or her and be available at all reasonable times for consultation with the Representatives of the other Parties in connection with any matter arising under this Agreement;
  - (ii) is deemed to be the agent of the Party that appointed him or her in respect of any decision made or information given or received by that Party concerning any matter arising under this Agreement; and
  - (iii) is responsible for ensuring any students enrolled through the Party who are involved in the Project comply with the conditions set out at Item 9 of Schedule 1,provided that a Representative may not agree to vary the terms of this Agreement without the written agreement of its appointing Party.
- (d) Each Party may replace its Representative on 10 Business Days' notice in writing to the other Parties.

## 7. Project Variation

- (a) Any variation to the Project, including to Milestones or Deliverables, must be agreed in writing by CRC HPS and all Project Participants.
- (b) A Project Participant will not be compensated for any work performed in relation to a variation that has not been authorised in accordance with this clause.

## 8. Withdrawal and Expulsion from the Project

Withdrawal and expulsion of a Project Participant from the Project will be dealt with in accordance with MPA Clause 19.

## 9. Intellectual Property

- (a) Each Project Participant will make available to the Project its Background IP as specified in Item 4 of Schedule 1, subject to any conditions or restrictions also specified in Item 4 of Schedule 1, and otherwise in accordance with MPA Clause 16.
- (b) Upon its creation, all Project IP will be owned by CRC HPS, as further detailed in MPA Clauses 21.1 and 22, unless otherwise specified in Item 5 of Schedule 1.
- (c) The Parties' rights to use Project IP, including any Use Field and Use Field Conditions, are detailed in Item 8 of Schedule 1.

## 10. Utilisation and Income

- (a) The Utilisation Agent is the Party named in Item 10 of Schedule 1.
- (b) The Project Parties will share in Utilisation Income as follows:  
[insert details]
- (c) The Utilisation Agent will be assigned or licensed all Project IP encompassed by the Utilisation Field in accordance with MPA Clauses 21 and 22.

## 11. Confidentiality

Each Party will treat the terms of this Agreement, all Project IP, Background IP and Confidential Information owned by the other Parties as confidential, and in accordance with MPA Clause 26.

## 12. Acknowledgement

Each Party acknowledges that the Project is experimental and that no particular result is guaranteed by any Party.

## 13. Indemnities and Insurance

Each Party will comply with MPA Clauses 28 and 29 with respect to the provision of indemnities and the maintenance of insurance under this Agreement.

## 14. Dispute Resolution

Disputes between the Parties will be dealt with in accordance with MPA Clause 46.

## 15. Termination or Extension

Without limitation to CRC HPS's right to terminate the Project and this Agreement in accordance with MPA Clause 20, this Agreement will terminate:

- (a) on the Completion Date, unless otherwise agreed by the Parties; or
- (b) upon termination or expiry of the Major Partners Agreement for any reason.

## 16. Notices

Each Party's address for notices is detailed in Item 13 of Schedule 1, and MPA Clause 39 will otherwise apply.

## 17. General

### 17.1 Governing law and jurisdiction

This Agreement is governed by the laws of New South Wales and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

### 17.2 Assignment

No Party may assign or attempt to assign or otherwise transfer or encumber any right or obligation arising out of this Agreement except with the written consent of the other Parties.

### 17.3 Costs

Each Party must pay its own costs of negotiating, preparing and executing this Agreement.

### 17.4 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

### 17.5 Entire agreement

Subject to the Major Partners Agreement and/or the Partners Agreement and the MPA clauses, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

### 17.6 Further action

Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

### 17.7 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

### 17.8 Waiver

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

**EXECUTED** as an Agreement:

**Signed for CRC for High Performance Soils Limited** by an authorised officer in the presence of:

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

**Signed for [Project Participant]** by an authorised officer in the presence of:

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

**Signed for [Project Participant]** by an authorised officer in the presence of:

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

## Schedule 1

**Item 1 Project Title**

*[insert]*

**Item 2 Commencement Date**

*[insert date]*

**Item 3 Completion Date**

*[Insert date] unless otherwise agreed in writing between the Parties.*

**Item 4 Background IP**

*[By name of Party that is contributing the Background IP:*

*Description*

*Disclosures/Restrictions Conditions]*

Name of Party contributing Background IP	
Description of Background IP	
Disclosures/ Restrictions	
Conditions	

**Item 5 Ownership of Project IP**

*[Insert any details to change of ownership of Project IP or state Not Applicable]*

**Item 6 Representatives at the Commencement Date**

CRC HPS: *[insert name and contact details of the Representative]*

Project Participant 1: *[insert name and contact details of the Representative]*

Project Participant 2: *[insert name and contact details of the Representative]*

**Item 7 Specified Division**

*[Where relevant insert division, department or faculty of a Party]*

**Item 8 Rights to use Project IP, Use Field and Use Field Conditions**

*[Insert any other rights to be provided to the Project Participants]*

*[Also insert details of Use Field and Use Field Conditions for each project Participant]*



## Schedule 2

### MAJOR PARTNERS AGREEMENT CLAUSES (MPA CLAUSES)

Clause Number	Clause Heading
1	Definitions and interpretation
14	Pre-existing Material
15	Projects
16	Project Funds and Project Contributions
17	Project Management and Reporting
18	Variation to Projects
19	Withdrawal and Removal from Projects
20	Termination of Projects
21	CRC IP
22	Project IP
24	Moral Rights
26	Confidentiality
28	Indemnities
29	Insurance
33	Audit and Access
35	Safe and Ethical Research
36	Responsible Conduct of Research
37	Student Involvement
38	Publications
39	Notices and Other Communications
46	Dispute Resolution

## Annexure 1      Project Plan

To include as a minimum:

**(a) Project Leader**

**(b) Project Summary**

*Approximately 500 words of plain language summarising objectives, methodology, expected outputs, Utilisation and impact.*

**(c) Project Objectives**

*Describe project objectives – up to half a page of dot points.*

**(d) Proposed Project Strategy and Research Methodology**

*Describe the proposed strategy and methodology, including the responsibilities of the Participants – up to 2 pages.*

**(e) Outputs**

*Describe project outputs – up to half a page of dot points.*

**(f) Utilisation and Impact**

*Describe how the project Outputs will be used by the Utilisation Agent and the potential impact, including opportunities for application and Utilisation.*

**(g) Milestones**

*There must be a milestone for every quarter over the life of the project. Invoices are paid in arrears on completion of the milestone for the corresponding quarter. The milestone must include a link to the relevant output/Commercialisation milestone in the Commonwealth Agreement (Schedule 2).*

	Project Milestones	Project Participant	Date Due	Milestone related to in Commonwealth Agreement (Ref #)
1.				
2.				
3.	Add more as needed			

**(h) Deliverables**

*As appropriate, please describe project deliverables – up to half a page of dot points.*

**(i) Project Risks**

*Describe project risks and how they will be avoided or mitigated. Please consider all risks though to impact, including technical, regulatory and market risks.*

**(j) Deed Polls**

*Have project deed polls been completed for all staff and students involved in the project?*

*Yes / No*

**(k) Moral Rights Waiver**

*Are moral rights waiver forms required for any project personnel for this project?*

*Yes / No*

*and if so, have they been completed?*

*Yes / No*

**(l) Ethics Approvals**

*Have the appropriate ethics approvals been sought and granted for this project?*

*Yes / No*

**(m) Student Contribution**

*Please briefly detail any student projects, including the anticipated contribution by the student(s) to the overall project outputs.*

## Annexure 2 Project Budget

**(a) Project Budget**

The Project Budget must be shown to represent each quarter over the life of the project against the heads of expenditure shown in the table below. Provide a separate budget for each Project Participant. Project payments are made in arrears subject to completion of corresponding milestones/ deliverables. Funding for research students needs to be included in the project budget.

**Please use the separate budget spreadsheet provided by CRC HPS to complete the budget details for each Project Participant.**

Budget Item	[insert date]	[insert date]	[insert date]	[insert date]	Total
Salary					
Project operating					
Student stipend					
Student operating					
<b>Total</b>					

*Note: Employee Expenses include salaries, direct salary on costs, fellowships and student stipends. t*

*Note: when valuing shortfall under clause 7 of the Commonwealth Agreement, a full time equivalent (FTE) of 1.0 have a value of \$250,000.*

**(b) Required expenditure on new assets**

*Please detail and capital expenditure in the table below*

Project Participant	Equipment Item	\$ value

*Note: Capital Expenses are assets of a durable nature, the purchase price of which exceeds \$20,000.*

**(c) Project Contributions**

*Non-cash Contributions*

1. Staff in-kind contributions

Project Participant	Name	Level SM, KR, RP, SS	% Time	Start Date	Finish Date	In-kind value (\$)

*\*Level indicates one of the 4 levels provided by the Commonwealth SM = Senior Manager - \$420K per annum  
 KR = Key Researcher/Project/Theme Leader/Manager - \$280K per annum  
 RP = Researcher/Professional - \$220K per annum  
 SS = Other Support Staff - \$180K per annum*

2. Non staff in-kind contributions (CRC-funded staff)

Project Participant	Agreed \$ value

3. Non staff in-kind contributions (Equipment Items)

*The value of other non-staff in-kind, such as contribution of products, or operating costs of major equipment items must be agreed by the Project Parties and approved by the Board. Use of an institution's routine laboratory equipment to undertake CRC Activities will not constitute a non-staff in-kind contribution.*

Project Participant	Equipment item	Agreed \$ value

4. Total in-kind contributions

Project Participant	Agreed \$ value
<b>Total project in-kind value</b>	

*Cash Distributions*

*A Research Participant's cash contribution to a project will be calculated as the CRC payments made to a Research Participant for a project in a given financial year divided by the 'CRC cash multiplier' (e.g., 4:1).*

*CRC HPS's cash contribution is based on provision of Commonwealth cash to the project calculated as total project budget minus total Project Participant cash.*

Project Participant	Agreed \$ value
CRC HPS Ltd	
<b>Total Project CRC cash</b>	

(d) *Third party contributions*

*Please detail any cash or in-kind contributions made by third parties.*